



Serving the Iowa Legislature

IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

January 24, 2013

Final 2012 Interim Issue

In This Edition

Calendar 1

Agendas 2

Briefings 3

- Administrative Rules Review Committee (1/8/ & 1/9/13)
- Mental Health and Disability Services Redesign Fiscal Viability Study Committee (1/11/13)
- Legal Update—Gender Discrimination in Employment

January 2013

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

February 2013

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

Friday, February 8, 2013

Administrative Rules Review Committee

8:30 a.m., Committee Room 116, Statehouse

Iowa Legislative Interim Calendar and Briefing is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Administrative Rules Review Committee

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Friday, February 8, 2013, 8:30 a.m.

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Agenda: Published in the Iowa Administrative Bulletin:

<https://www.legis.iowa.gov/iowaLaw/AdminCode/bulletinSupplementListing.aspx>

ADMINISTRATIVE RULES REVIEW COMMITTEE

January 8 and 9, 2013

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

EDUCATION DEPARTMENT, *High School Equivalency Diploma*, 12/12/12 IAB, ARC 0510C, NOTICE.

Background. The Department of Education undertook this rulemaking because the single-source provider of the state's high school equivalency test, the General Educational Development (GED) test, was recently purchased by the Pearson Corporation, which led the department to consider other options for high school equivalency testing. These amendments make required changes in the administration of testing procedures.

Commentary. A representative of the department explained that the provider of the GED test was recently purchased by the Pearson Corporation, and that a steering committee has been established to explore other options for providing the state's high school equivalency test. He noted that state law does not require that the GED be used as the state's high school equivalency test.

Committee members expressed concern about item 7, under which applicants passing the test are unable to receive their diplomas until age 18. Members noted that students who skip grades or graduate early are able to receive diplomas before age 18 and suggested that the age requirement puts applicants for equivalency diplomas at a disadvantage. Members acknowledged the importance of encouraging students not to drop out of school early to pursue an equivalency diploma instead, but felt the requirement could represent another obstacle for young people seeking to complete their education. The department representative explained that the age requirement comes from statute, but the department would welcome guidance from the General Assembly on this issue. Committee members voted to refer this item of the rulemaking to the General Assembly for further review.

Members also expressed concern about the effect of this rulemaking on the GED program run by the Department of Corrections. The representative of the Department of Education said they would look into this. Public comment was received expressing concern about possible cost increases for test takers as a result of this rulemaking.

Action. General referral of item 7.

HUMAN SERVICES DEPARTMENT, *Disability Services Management*, SPECIAL REVIEW.

Background. This rulemaking establishes criteria for exempting counties from joining into regions to administer mental health and disability services. The Department of Human Services is charged with implementing redesign of the mental health and disability services system into a regionally administered, locally delivered service system. The authority to accept applications for an exemption is repealed effective July 1, 2013.

The department was given emergency rulemaking authority due to the requirements in Code for counties to voluntarily form regions by April 1, 2013, or submit a letter of intent by May 1, 2013, to apply for an exemption from forming into a region of at least three contiguous counties.

Commentary. A representative of the department summarized the rulemaking; the department was required to submit this rulemaking for review by the committee before it would go into effect on an emergency basis.

Public comment was received from representatives of the Iowa State Association of Counties and Polk County Health Services expressing concern about the requirements necessary to receive an exemption. They asserted the requirements are unworkable for any county to meet, are too restrictive, and beyond the scope of the underlying legislation, 2012 Iowa Acts, Chapter 10 (SF 2315). They said SF 2315 only requires that a county seeking an exemption has the capacity to provide the same services as a region, whereas the requirements in the rulemaking set much higher standards.

The department representative explained that there is confusion between "core services," for which SF 2315 requires a county seeking an exemption to match the requirements for a region, and standards for evidence of availability of those core services, which are set out in the rulemaking. He contended that the requirements the public commenters were contesting relate to standards for evidence of availability of core services, which do not establish new core service requirements themselves. He contended that this requirement is consistent with SF 2315.

Committee members asked the representative of Polk County Health Services if Polk County would seek an exemption, and if he thought it would receive one under this rulemaking. The representative said Polk County would likely seek an exemption, and he was not sure if it would qualify for one under these standards. He also noted that necessary state funding is uncertain and that the required forms are not yet available.

Some committee members suggested these standards might represent too high a bar for even the most qualified coun-

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

(Administrative Rules Review Committee continued from Page 3)

ties to meet; others suggested that these standards should be high in order to ensure that citizens are able to receive necessary services.

Action. None taken.

INSPECTIONS AND APPEALS, *Tuberculosis (TB) Screening*, 12/12/12 IAB, ARC 0484C, ADOPTED.

Background. This rulemaking sets out requirements and procedures to conduct tuberculosis screenings for health care workers employed in hospitals and health care facilities; the rules include the screening process to be used, the risk classification, and who may conduct TB screenings. All health care workers must be screened on hire.

Commentary. These rules are based on the federal Centers for Disease Control guidelines. Stakeholders complained that the testing requirements for volunteers are unworkable. Under the rules, volunteers are treated as health care workers. Stakeholders feared that a testing requirement would discourage persons from volunteering. Department representatives noted that retesting of volunteers is not required.

Action. Seventy-day delay, additional review in February or March.

PUBLIC HEALTH, *Vital Records*, 12/12/12 IAB, ARC 0483C, ADOPTED.

Background. The department has completed a general rewrite of the regulations relating to vital records.

Commentary. The department is currently engaged in a contracting process to select a vendor to computerize these records. Stakeholders are concerned that any major rewrite of the current rules could either delay or even end the contracting process, since the specific detail in the rules does impact the computerization requirements and the contract. For that reason, the committee voted to delay the effective date of this entire filing until the adjournment of the 2013 session of the General Assembly.

Action. Session delay, additional review in February or March.

DEPARTMENT OF TRANSPORTATION, *Driver's License: Deferred Action for Childhood Arrivals*, INFORMAL DISCUSSION.

Background. In a June 15, 2012, memo the federal Department of Homeland Security announced that it would defer removal actions on certain aliens who had been brought to the United States as children and who have lived in the United States for at least five years. The memo specifically stated: "This memorandum confers no substantive right, immigration status or pathway to citizenship."

In interpreting the impact of this memorandum, the Iowa Department of Transportation determined in December 2012 that the memo does not confer any legal status on these individuals, and for that reason, the individuals could not be granted a driver's license. A department memorandum stated that under Iowa Code §§321.182, 321.190, and 321.196, a driver's license could only be issued to a foreign national "authorized to be present" in the United States. The department noted that the federal memorandum did not grant any such authorization. Department representatives stated that Iowa law would need to be changed to allow these individuals to obtain a driver's license.

Commentary. This issue came before the committee at its January 2013 meeting, but there was not an actual rule to review. Committee members questioned why this policy had not been promulgated as a rule. Department representatives contended that there is not a new policy, and that the federal memo does not affect existing policy. Some members disagreed and contended that the department action simply made it more difficult for these individuals to obtain an education or find employment. Members noted that some individuals had been issued a license prior to the December announcement and now the department is taking action to revoke those licenses.

Public commenters noted that the deferred action came with specific criteria, requiring that the individual be under age 30 and either be in school, have graduated school, or be a veteran. The individual also could not have a significant criminal record. Public comment supported granting drivers licenses to these individuals.

Action. This was an issue review by the committee, no formal action was available.

SECRETARY OF STATE, *Noncitizen Registered Voter Identification and Removal Process*, 12/12/12 IAB, ARC 0528, AMENDED NOTICE.

Background. This rulemaking was placed into effect on an emergency basis and also published as a notice of intended action. The Secretary of State now amends and republishes the notice of intended action. Under this new program, the Secretary will obtain lists of foreign nationals who are residing in Iowa and match the lists against the voter registration records. A federal immigration database will be used to verify citizenship status. The program has a review process; a registered voter who may not be a citizen of the United States and may be illegally registered to vote

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

(Administrative Rules Review Committee continued from Page 4)

will be notified of the voter's right to dispute and respond to the information received by the Secretary's office within 30 days of the date of the notice, or 60 days if the voter requests additional time. This 30- to 60-day period is an increase from the 14 days provided in the original notice. The rulemaking also requires the Secretary of State to notify county auditors of potentially ineligible voters who do not timely respond to the notice sent by the Secretary of State and sets out a process for county auditors to follow thereafter.

Commentary. Representatives of the Secretary of State noted that only the local officials have the authority to strike a registered voter from the rolls, and that this process is used to identify those persons who are improperly registered. The representatives noted the process had a number of steps to ensure that voters were not misidentified.

Opponents of this program contended that a real problem does not exist and that individuals are not voting illegally in any significant number. They contended that the program would actually discourage lawfully registered persons from voting and that the impact would be most heavily felt by Latino voters who may feel intimidated by government scrutiny. The opponents also stated that the program is a waste of resources, contending that very few individuals have registered unlawfully. Proponents supported the rules, stating that the program ensured that only citizens could vote.

Action. Additional review when adopted in final form.

Next Meeting. The next regular committee meeting will be held in Statehouse Committee Room 116, on **FRIDAY, February 8, 2013**, beginning at 8:30 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=85&CID=53>

MENTAL HEALTH AND DISABILITY SERVICES REDESIGN FISCAL VIABILITY STUDY COMMITTEE

January 11, 2013

Co-Chairperson: Senator Joe Bolkcom

Co-Chairperson: Representative Renee Schulte

Background. The Mental Health and Disability Services (MH/DS) Redesign Fiscal Viability Study Committee was created by the Legislative Council for the 2012 interim and charged to analyze the fiscal viability of the mental health and disability services redesign provisions enacted in the 2012 Legislative Session. The committee was authorized to hold two meetings, scheduled for December 18, 2012, and January 11, 2013. At this meeting the committee considered reports of various studies required in connection with the redesign legislation (2012 Iowa Acts, chapter 1120 (SF 2315)), discussed reports submitted by the Department of Human Services (DHS), reviewed financial information provided by the Legislative Services Agency (LSA), heard comments from a panel of county representatives, and approved recommendations.

Jail Diversion—Mental Health Courts Study. Mr. Paul Stageberg, Administrator, Division of Criminal and Juvenile Justice Planning, Department of Human Rights, discussed this study which was performed in accordance with 2012 Iowa Acts, chapter 1079 (SF 2312). The report recommendations include a request for the state to dedicate resources to inventory and conduct evaluations on jail diversion and mental health courts in Iowa, including cost-benefit analyses. In discussion, it was suggested there would be significant interest by community-based corrections programs in implementing jail diversion and mental health courts.

Third-Party Coverage Sources for Adults with a Developmental Disability (DD) or Brain Injury (BI). Mr. Rick Shults, Administrator of the MH/DS Division, DHS, discussed this report which was required by the redesign legislation. He explained that for the most part, third-party coverage does not cover home and community-based services (HCBS), long term care and supports, and intensive rehabilitation and recovery services and supports but instead covers acute care immediately following an injury. Consequently, the DHS report provides cost estimates for expanding the existing Medicaid HCBS waiver for persons with BI and the existing Medicaid waiver for persons with an intellectual disability to cover other developmental disabilities.

Brain Injury Workgroup. Mr. Tom Brown, workgroup co-chair, discussed the workgroup's priorities for enhancing services for persons with BI. The priorities include appropriating new funding to expand neuroresource facilitation services to assist persons with BI in accessing services, to cover state staff in the Department of Public Health to work with BI policy, to support training of providers, and to eliminate the waiting list for the Medicaid BI waiver.

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

(Mental Health and Disability Services Redesign Fiscal Viability Study Committee continued from Page 5)

Adult Crisis and Stabilization Center Pilot Program. Mr. Bob Lincoln, Administrator, County Social Services (CSS), an 18-county region in north central Iowa. CSS is operating this 10-bed pilot in Black Hawk County in conjunction with the two hospitals serving the Waterloo area. The hospitals' emergency departments refer persons to the program where the average length of stay is four to five days and costs are approximately \$225 per day. It was noted that the pilot is operating with a licensing exemption, partly as a way of identifying licensing requirements for such facilities.

Update on County Regionalization. Ms. Linda Hinton, Government Relations Manager, Iowa State Association of Counties (ISAC) was joined by Mr. Shults in discussing the current status of counties with tentative agreements to join together in regions and a map depicting the agreements. The deadline for formal letters of intent for counties to voluntarily join in a region is April 1, 2013. DHS and ISAC will be working together to provide regionalization technical assistance to counties prior to the application deadline. The DHS Director will consider county applications for an exemption from the requirement that a region must comprise at least three counties, but the director is not authorized to grant an exemption from the requirement that counties must be contiguous.

MH/DS Funding Overview. Mr. John Pollak, LSA Legal Services Division, and Mr. Jess Benson, LSA Fiscal Services Division, provided an overview of the funding requirements associated with the redesign legislation. Mr. Pollak discussed the property tax levy limits in the legislation, the two-year time frame covered, and the equalization funding provisions for those counties with a current levy below the per capita target amount identified in the legislation. Mr. Benson recapped the shifting of funding from counties in order for DHS to assume responsibility for funding of Medicaid MH/DS services in place of counties, the property tax funding to be used by counties to fund non-Medicaid services, and financial considerations for replacing legal settlement with residency as the basis for determining county financial responsibility for MH/DS effective on July 1, 2013.

DHS Transition Fund Report. This report was previously discussed at the study committee's December meeting. Director Palmer, Mr. Shults, and Ms. Hinton were joined by Ms. Jean Slaybaugh, DHS Chief Financial Officer, for this discussion. The discussion included the requests by counties for sufficient funding to begin FY 2013-2014 with an ending balance from the previous fiscal year in order to pay service bills until property tax levy revenues are paid in September, whether legislation is needed to require counties to pay remaining Medicaid billings to the state, and the reluctance of counties with positive fund balances to enter into regional agreements with counties with negative balances.

Transition Committee Report. This report was discussed by Mr. Lincoln and Director Palmer, committee co-chairs. The committee had previously provided input to DHS concerning administrative rules relating to the Transition Fund, readiness criteria for regional operations, waivers for single or dual county regions, and other regional formation, implementation, and operational issues and requirements. Much of the discussion concerned the Transition Committee's recommendations for legislative action, summarized as follows:

1. Develop and approve a Transition Fund allocation method that uses the entire available CHIP contingency fund for the transition and unintended consequences related to redesign of Iowa's mental health delivery system passed by the 2012 Legislature.
2. Provide that no child or adult consumer loses services as a result of the transition.
3. Establish the \$47.28 per capita amount as the guidance for counties in determining their budget for MH/DS services and provide for the equalization funding as soon as possible.
4. Award equalization funding up to the \$47.28 level to regions as opposed to individual counties.
5. The study committee should establish an appeals process for counties requesting an exemption from joining a region if the Chapter 17A appeals process is deemed not effective.
6. Set aside the statutory requirement for counties to submit a strategic plan for state fiscal year 2013-2014 as counties move to regionalization. The current county management plan will stay in place.
7. The study committee should begin to look at systemic barriers to implementing co-occurring and multi-occurring service development and coordination strategies.
8. Set June 30, 2013, as the end date for identifying county obligations for Medicaid bills. After that date, the state would receive any credits and pay any obligations resulting from retroactive cost adjustments, etc. This would allow counties to move forward with budgeting.
9. Authorize DHS to allocate to counties (regions) for state fiscal year 2013-2014 the money that is used for the current state payment program for services for individuals who are 100 percent county funded.

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

(Mental Health and Disability Services Redesign Fiscal Viability Study Committee continued from Page 6)

10. Authorize individuals in the community corrections system to have access to regional MH/DS services and provide for funding to pay for the access to these services.

Non-Medicaid MH/DS Services Provided by Counties—ISAC Panel. The ISAC panel consisted of Ms. Hinton; Ms. Linda Langston, Linn County Supervisor; Ms. Lonnie Maguire, Shelby, Harrison, and Monona County Central Point of Coordination Administrator (CPC); Ms. Deb Schildroth, Story County CPC; Ms. Lisa Rockhill, Lyon/Osceola CPC; and Mr. Bill Peterson, ISAC Executive Director. Ms. Schildroth and other panelists related scenarios describing persons receiving non-Medicaid services through the county system, either because the person is not eligible for Medicaid or the services are not covered by Medicaid, or both. It was agreed that Mr. Benson would work with ISAC staff in developing financial information concerning the costs of services and county waiting lists.

DHS Budget Proposal for New Regional Services Fund. Ms. Slaybaugh and Mr. Shults led this discussion. The proposal for FY 2013-2014 largely consists of federal Social Services Block Grant funding to be designated for core services and the proposal for FY 2014-2015 continues the federal funding and adds another \$25 million in state funding for growth in services and for new additional core services: comprehensive crisis services and precommitment screening. ISAC's written comments expressed concern about the sufficiency of the funding for the first fiscal year and was in support of the second fiscal year funding proposal.

Public Comment. The study committee heard public comment at the end of the morning and near the end of the meeting from individuals, service providers, and representatives of organizations. Those providing input included CPCs, MH/DS/BI policy body members, and residential care facility providers.

Recommendations. With significant discussion, the study committee made the following recommendations:

1. That up to \$20 million be designated for the Transition Fund created in 2012 Iowa Acts, chapter 1120 (SF 2315), to be available for counties to apply for in fiscal year 2012-2013. The provision for the designation along with distribution criteria should be included in legislation providing supplemental appropriations or other legislation enacted early in the 2013 Legislative Session.
2. That a request be made for continuation of the study committee.
3. That the General Assembly engage with the Governor in identifying the essential benefits package for the health insurance exchange and the Medicaid program in this state as provided for in the federal Patient Protection and Affordable Care Act (PPACA).
4. That on or before February 1, 2013, the Department of Human Services propose criteria and options for counties to repay their Medicaid and State Resource Center billings from the state at a time beyond fiscal year 2012-2013.
5. That on or before February 1, 2013, the Iowa State Association of Counties recommend options for counties to develop and maintain an appropriate ending balance for their county mental health and disabilities services funds.
6. That study committee members and other interested members of the Senate and House of Representatives continue to meet informally as a workgroup on a regular basis to continue addressing MH/DS redesign issues.
7. That the Legislative Services Agency prepare draft legislation to implement the recommendations submitted to the study committee by the redesign workgroups and committees so that the legislation can be considered by the informal legislative workgroup.
8. That work activity services continue to be part of the MH/DS administered by counties.

LSA Staff: John Pollak, Legal Services, (515) 281-3818; Patty Funaro, Legal Services, (515) 281-3040; Amber DeSmet, Legal Services, (515) 281-3745.

Internet Page: <https://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=849>

LEGAL UPDATE—GENDER DISCRIMINATION IN EMPLOYMENT

Filed by the Iowa Supreme Court

December 21, 2012

Nelson v. Knight, __N.W.2d__ (Iowa 2012)

No. 11–182

http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20121221/11-1857.pdf

Background

The plaintiff, Ms. Melissa Nelson, worked for the defendant, Dr. James Knight, for over 10 years as a dental assistant in his dental office. During the last year and a half of that period, Dr. Knight began to complain that Ms. Nelson's clothing was too revealing and made other remarks to her which were sexual in nature. Ms. Nelson and Dr. Knight also began texting each other outside of work. Some of Dr. Knight's texts to Ms. Nelson were also sexual in nature. Dr. Knight's wife became aware of the texting and demanded that he terminate Ms. Nelson's employment because she felt Ms. Nelson's behavior was a threat to their marriage. The Knights consulted their pastor, who agreed with Mrs. Knight's position. Dr. Knight then terminated Ms. Nelson's employment, telling her that their relationship had become a detriment to his family and that the termination was in their mutual best interests. Dr. Knight later told Ms. Nelson's husband that she had not done anything wrong or inappropriate and that she was the best dental assistant he ever had. Dr. Knight explained that he was concerned he was growing too attached to her and might try to have an affair with her, although nothing had occurred as of yet. Ms. Nelson filed a complaint with the Iowa Civil Rights Commission and then filed suit against Dr. Knight alleging gender discrimination in the termination of her employment. She did not allege sexual harassment. Dr. Knight filed a motion for summary judgment which the district court granted, stating, "Ms. Nelson was fired not because of her gender but because she was [a] threat to the marriage of Dr. Knight." Ms. Nelson appealed.

Issue

Whether an employer who terminates the employment of an employee because the employer views the employee as an irresistible attraction commits unlawful gender discrimination under the Iowa Civil Rights Act.

Arguments and Holding

The Court's unanimous decision affirmed the district court's ruling that Dr. Knight was entitled to summary judgment. The Court found that Ms. Nelson's employment was terminated not because of her gender, but because of Mrs. Knight's demand that she be fired, which was based upon Mrs. Knight's perception that the relationship between Dr. Knight and Ms. Nelson was a threat to their marriage.

Under the Iowa Civil Rights Act, it is unlawful to discharge or otherwise discriminate against an employee because of the employee's gender. Dr. Knight argued that Ms. Nelson's employment was not terminated because of her gender, but because of the nature of their relationship and the perceived threat to his marriage. Dr. Knight noted that all of his employees are women. Ms. Nelson argued that the termination of her employment constituted gender discrimination because Dr. Knight's attraction to her and the perceived threat would not have occurred but for her gender.

The Court stated that cases interpreting federal civil rights law guide the Court's interpretation of the Iowa Civil Rights Act. The Court then discussed a series of federal cases finding that favoritism in employment based upon a consensual sexual relationship between an employer and an employee did not constitute gender discrimination, even though the sexual relationship would not have occurred but for the employee's gender. The rationale in these cases was that it was the employee's sexual conduct, not the employee's gender, which resulted in an adverse employment action. The Court reasoned that the result should be the same whether the sexual relationship results in either favoritism or unfavorable treatment of the employee. The Court analogized that line of cases to the facts in the case at hand. If a termination based on a sexual relationship would not, in and of itself, constitute gender discrimination, nor should the relationship between Ms. Nelson and Dr. Knight. The Court acknowledged the key distinction that Ms. Nelson had not engaged in any sexual conduct with Dr. Knight. The Court noted, however, that alleged improper conduct by an employer is the issue in employment discrimination cases, not improper conduct by an employee. Therefore, Ms. Nelson's choice not to reciprocate Dr. Knight's attention would not determine the outcome of the case. The Court also cited a case similar to this one, in which a female employee's employment was terminated for causing jealousy within her employer's family, for which she was blameless. The cause of the termination in that case was found to be the employer's desire to resolve the familial conflict, not the employee's gender.

The Court rejected an assertion by Ms. Nelson that any termination of employment because of an employer's physical interest in an employee is, by definition, gender discrimination. The Court stated this would mean that any termination

BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

(Legal Update—Gender Discrimination in Employment continued from Page 8)

of employment resulting from a consensual relationship would amount to gender discrimination, because the relationship would not have happened but for the employee's gender. The Court noted that under federal precedent, the consensual relationship is considered to be the determining factor in such cases, not the employee's gender. The Court then drew a distinction between what it called an "isolated employment decision based on personal relations" and gender discrimination. The Court stated that a decision "driven entirely by individual feelings and emotions regarding a specific person" is not a decision based on the person's gender. The Court acknowledged that Dr. Knight's treatment of Ms. Nelson was unfair, but stated that the Iowa Civil Rights Act does not prohibit employer conduct that is merely unfair, if it is not discriminatory. The Court stated when Dr. Knight replaced Ms. Nelson with another woman, he did not violate the goal of the Iowa Civil Rights Act, which is to ensure equal treatment of employees regardless of their gender, not to ensure that employees are treated fairly.

The Court also acknowledged a lack of other factors which might have resulted in a different outcome. Ms. Nelson did not show that Dr. Knight had treated any other employee the way he treated her; that he had terminated her employment for failing to conform to gender stereotypes; or that he had engaged in sexual harassment. The Court reasoned that Dr. Knight's termination of Ms. Nelson's employment out of concern that he might commit sexual harassment in the future is not the same as actually committing sexual harassment.

Impact and Applicability

Under the Iowa Civil Rights Act, Iowa Code §216.6(1)(a), it is unlawful to discharge or otherwise discriminate against an employee because of the employee's gender. The Court held that this prohibition does not prevent an employer from terminating the employment of an employee because the employer is attracted to the employee and the attraction is perceived to threaten the employer's marriage. This case establishes the principle that, under the Iowa Civil Rights Act, adverse employment action taken solely due to an employer's attraction toward an employee, even if that attraction would not exist but for the employee's gender, is not considered to be gender discrimination. The Court drew a distinction between adverse employment action motivated by personal feelings toward a particular person and adverse employment action motivated by bias against that person's gender. While the Court agreed that the conduct at issue in this case was unfair, the Court stated that the Iowa Civil Rights Act does not prohibit unfair conduct, only discriminatory conduct.

LSA Monitor: Jack Ewing, Legal Services, (515) 281-6048.